

THE BOARD OF NURSING HOME ADMINISTRATORS

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REPORT TO THE CALIFORNIA LEGISLATURE

**Board Overview, Issues, Findings
and Recommendations**

**Prepared by:
Joint Legislative Sunset Review Committee**

APRIL, 1997

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD

The Board of Nursing Home Administrators (BNHA), formerly known as the Board of Examiners of Nursing Home Administrators, monitors candidates' training programs, tests and licenses applicants, approves and monitors continuing education, and investigates and disciplines nursing home administrators.

According to the board, the BNHA's mission is to protect the public by ensuring only qualified persons are licensed and appropriate standards of competency are established and enforced. In order to continue to carry forward its mission, in 1994 the board conducted an extensive strategic planning session to develop goals and objectives for 1994-1996. The board, however, has not conducted a self-assessment of its overall effectiveness.

Enabling Legislation

The board was established in 1970 as a result of federal legislation, as set forth in Title XIX of the Social Security Amendment of 1968, mandating state licensure for nursing home administrators. It is important to recognize that the board's licensees are the only licensed managers in the health industry, and currently utilize the titles of nursing home administrator, administrator, executive director, regional administrator or chief executive officer.

The Nursing Home Administrator's License Law can be found at Chapter 8.5 Section 3901, et seq., of the Business and Professions (B&P) Code. The board's regulations appear in the California Code of Regulations (CCR), Title 16, Division 31.

The board is mandated (by federal law and state statute which mirrors its federal counterpart) to impose and enforce standards which must be met by individuals in order to obtain a nursing home administrator's license, and to discipline those individuals not upholding those standards.

Composition of the Board

B&P Code Sections 3910-3912 specify board composition and member qualifications. The board is composed of nine members -- five public members and four licensed nursing home administrators. It should be noted that the public member majority on this board is an anomaly, in that health care regulatory boards in the Department of Consumer Affairs (DCA) typically

have a majority of practitioner members. The four practitioners and three public members are appointed by the Governor, and the two remaining public members are appointed by the Senate Rules Committee and the Assembly Speaker, respectively.

In addition to being U.S. citizens and residents of California, the four industry board members must be actively engaged in the administration of nursing homes. Two practitioner members must be actively engaged in proprietary nursing homes, and two actively engaged in nonprofit, charitable private nursing homes.

One of the five public members must be actively engaged in the practice of medicine, with a demonstrated interest in convalescent and chronic care, and one must be actively engaged as an educator in health care administration. Also, no public member can be appointed or continue to serve if he or she, or his or her spouse, children, parents, brothers or sisters are engaged in the management, ownership, operation or supervision of any nursing home or hospital, or have a legal or financial interest in any nursing home or hospital.

Currently, there are no board vacancies, and the present composition sufficiently represents both the profession and consumer populations. There has been no thought or consideration given to either increasing or decreasing the size or make-up of the board.

LICENSEE INFORMATION

	1992/93	1993/94	1994/95	1995/96
NUMBER OF LICENSEES	4,182	4,064	4,258	3,964
ACTIVE LICENSEES	2,785	2,943	2,754	2,761
INACTIVE LICENSEES	792	840	910	741
DELINQUENT LICENSEES	605	281	594	462
RENEWALS ISSUED	1	2,292	796	1,379
NUMBER LICENSES RENEWED	1,527	1,582	1,718	1,243

BUDGET AND STAFF

Revenue Sources, Fee Structure and Expenditures

The board's main source of revenue is its initial license and biennial renewal fees, which, together with a variety of applicant and licensee fees, support the board's administrative, enforcement, licensing, and continuing education activities.

Fees

The board's license is good for two years. The board's current fee structure is as follows:

Fee Schedule	Current Fee	Statutory Limit
Application Fee (in-state)	\$ 25	\$25
Application Fee	\$ 50	\$50
Exam Fee for Any Section Tested	\$ up to \$440	\$ up to \$440 1/97
Original License Fee	\$190	\$190
Renewal Fee	\$190	\$190
Retired License Fee	\$same	\$same

In addition to miscellaneous fees charged, revenue is also derived from file and document reproduction charges, dishonored check fees, and enforcement cost recovery, and interest.

Current Fiscal Climate

Revenue sources are projected to remain fairly constant for the next two fiscal years. The board's **annual budget for fiscal year 1994-95 was \$585,000, and was reduced to \$502,000 in fiscal year 1995/96.** In May 1995, the board realized its licensing population was declining at a rate of approximately ten percent every two years, while expenditures were increasing approximately six percent annually.

Impact of Cyclical License Renewal

Because of the transition to birthdate cyclical renewals, the next series of license cancellations (which occurs if a licensee fails to renew for three years) after July 1, 1997, will occur February 1, 1998. Based upon current information, it is anticipated eight to ten percent of current delinquent licenses will cancel as of that date. It should be noted, from that point forward the board will realize license cancellations on a monthly basis rather than every two years.

Austerity Measures

In recognition of an impending fiscal crisis, in May 1995, the board immediately downsized its staff and all board activities, and began to monitor its expenditures more closely. Following months of research and budget monitoring, *the board concluded its only recourse to solve its fiscal dilemma was to proceed with fee increases touching upon each mandated program component*; i.e., license fees, applicant fees, continued education provider and course approval fees, as well as delinquency fees. The additional revenue generated by the proposed fee increases would have enabled the board to remain diligent in its efforts to improve and enforce standards for applicants and licensed administrators, as well as avoid cuts in services to the board's applicant and licensee populations.

Unfortunately, *the board was unable to secure an author for its fee increase legislation, and, thus, immediately instituted additional expenditure reduction measures in its licensing and examination processes, the preceptor training program, the regulatory and legislative programs, as well as the overall administrative functions of the board.*

The board's last license fee increase occurred in 1989, when Senate Bill 1566 increased biennial fee maximums for initial and renewal licenses from \$150 to \$200. Assembly Bill 3660, effective January 1, 1995, enabled the board to increase examination fees intended to cover the cost of purchasing and administering the state and national examinations, while at the same time lowering the license fee statutory maximums to \$190 biennially.

It should be noted that the 1995 examination fee increase did not factor in all administrative expenses associated with the administration of the licensure examinations, only the actual contract cost of purchasing the exams. Thus, the licensure examination process continued to be subsidized by licensing fees by approximately \$24,000 per year. Consequently, in order to assure the examination program is self-supporting, the board elected to reduce the number of exams administered per year and limit the exam sites to Sacramento.

At its August 1996 meeting, the board chose to raise examination fees to statutory maximums; i.e., \$175 for the written national examination and \$140 for the written state examination. The increases are supported by the industry's professional and trade associations, and regulations affecting these exam fee increases are currently pending at the Office of Administrative Law and expected to be approved January 1997.

Also at the August, 1996, meeting, the board approved the elimination of the 30-day grace period before a delinquency fee is assessed to late renewing licensees. The board anticipates this regulatory amendment to be in effect July 1, 1997.

Workload Projections Outpace Revenue Potential

Because of existing and consistently increasing program backlogs, in 1994 board staff conducted a workload analysis for each program component, which was presented to the DCA and the Department of Finance (Finance) as justification for a budget change proposal (BCP) targeted to increase staffing levels. *Finance concluded staffing levels were far below what was necessary to*

keep pace with the board's workload, and recommended staffing increases which exceeded the board's request.

It should be noted, however, because of the board's impending fiscal crisis, it was necessary to release the majority of the staff hired to relieve the board's backlogs a mere three months following their hire.

LICENSING REQUIREMENTS AND APPLICATION PROCESS

Qualifications for Licensure As a Nursing Home Administrator

When the board was created, experienced individuals were allowed to sit for a licensure examination without a prescribed level of education (i.e., grandfathered into licensed status); however, over the years this board policy changed. Currently, California Code of Regulations (CCR) Section 3116 sets forth qualifications a candidate must possess in order to qualify to take the nursing home administrators examination. In addition to being at least 18 years of age, a candidate must possess one of the following:

- master's degree in nursing home administration or related health administration field, together with a 480-hour internship program completed in conjunction with the master's program; or
- baccalaureate degree and a board-approved administrator-in-training program consisting of a minimum of 1,000 hours; or
- 10 years of full-time work experience (at least 5 of which shall have been in a supervisory position), within the immediately preceding 15 years, as a registered nurse in a nursing home, and a board-approved administrator-in-training (AIT) program consisting of a minimum of 1,000 hours; or
- 10 years of full-time work experience (at least 5 of which shall have been in a supervisory position) in any department of a nursing home, together with 60 semester or 90 quarter units of college courses, and a board-approved administrator-in-training program consisting of a minimum of 1,000 hours.

Candidates qualifying on the basis of work experience must provide verification to the board in fully executed declarations by licensed nursing home administrators, physicians, or registered nurses. These candidates, together with candidates applying under the qualifying categories which require completion of a board-approved AIT program of at least 1,000 hours, must successfully complete this training under the supervision and guidance of a preceptor who is currently a licensed nursing home administrator and has completed a board-approved preceptor training program.

Requirements for Qualifying for Licensure by Reciprocity

CCR Section 3116.5 sets forth the requirements for licensure through reciprocity. In addition to remitting appropriate examination and application fees prescribed in CCR Section 3180, a reciprocity candidate must:

- Demonstrate substantial knowledge of California statutes, codes, regulations and rules, provided the board finds the standards for licensure in such other jurisdiction are at least substantially equivalent of those prevailing in California and the applicant is otherwise qualified.
- Meet the minimum education requirements that existed in California when the applicant was originally licensed, as follows:

<i>Prior to 7/1/73</i>	<i>None</i>
<i>7/1/73 to 6/30/74.....</i>	<i>30 semester units</i>
<i>7/1/74 to 6/30/75.....</i>	<i>45 semester units</i>
<i>7/1/75 to 6/30/80.....</i>	<i>60 semester units</i>
<i>Since 7/1/80.....</i>	<i>Baccalaureate degree</i>

- On a form provided by the board, furnish a certificate from a similar board in another state certifying the applicant is currently licensed and in good standing, and has achieved a score of at least 75 percent on the written national nursing home administrators licensing examination.

In addition to completing the required application and submitting certification information from the current state of licensure, a reciprocity candidate must also submit to the board an academic transcript, California fingerprint cards, a DMV driving history, and an additional certificate or endorsement from “each” state in which a license has been held, either current, inactive or expired. The certificate/endorsement is used to verify licensure as well as confirm the applicant is not on probation, awaiting disciplinary action, or under investigation.

If the reciprocity candidate qualifies for licensure based upon the above requirements, the candidate must take and pass the state written examination. The board does not issue provisional licenses, and a reciprocity applicant must meet all qualifications, await the results of the state examination, and become licensed before practicing in California.

As part of the reciprocity application review process, the board utilizes the National Association of Boards (NAB’s) “Disciplinary Report”, which contains specific disciplinary actions taken against nursing home administrators in all states owning membership in NAB. This vehicle provides board staff a quick reference for any disciplinary action taken against a licensed candidate from another state seeking licensure in California.

States providing reciprocity information for candidates applying for California licensure follow a similar process. Thus, if an applicant does not begin the reciprocity at least six to eight weeks prior to an examination, the information necessary to qualify for licensure may not be forthcoming prior to an examination filing deadline. Also, although a candidate may qualify to take the licensure examination, an incomplete endorsement submitted late in the process may preclude the candidate from complying with the board’s application deadlines.

The board does not recognize international reciprocity because requirements for licensure vary widely, not only from state to state, but from country to country as well. Accordingly, applicants from other countries must have their education verified by a board-approved credentials evaluation service and meet all requirements for licensure set forth in CCR Section 3116.

Although academic and clinical experience requirements vary from state to state, and California licensees must possess knowledge of specific California laws and regulations, based upon a comparison of licensure requirements prepared by the NAB, *there are no requirements truly unique to California licensees versus what may be required in other states.*

It should be noted, however, California's AIT program requirements are matched or exceeded by only eight states, Alabama, Arizona, Florida, Hawaii, Maine, New Jersey, Utah and Virginia. Twenty-nine states require some type of AIT training, while 12 states require no specialized training whatsoever. Nursing home administrator licensure requirements of other countries are not available to the board.

Qualifying for Licensure Via the Administrator-in-Training Program

Individuals may qualify for nursing home administrator licensure by completing an Administrator-in-Training program. Applicants applying for licensure must meet at least one of the following qualification patterns:

- Master's Degree in Nursing Home Administration;
- Baccalaureate Degree and Completion of AIT Program;
- Ten Years Registered Nurse Experience; and AIT Program;
- Ten Years Work Experience and 60 Semester Units; and AIT program.

The review process includes application review, program approval, review of program change requests, and continued monitoring throughout the six-month to one-year AIT program. The entire review process is handled by one staff member and completed manually.

APPLICANT INFORMATION

The following chart sets out applicant statistical history over the last four fiscal years:

	1992/93	1993/94	1994/95	1995/96
TOTAL APPLICANTS FOR LICENSURE ⁽¹⁾				
AIT	185	142	171	145
MASTERS	5	5	10	9
RECIPROCITY	24	22	23	31
TOTAL NUMBER DENIED ⁽²⁾				
AIT	2	0	1	3
MASTERS	0	1	1	2

RECIPROCITY	1	0	1	3
TOTAL NUMBER LICENSED	152	118	140	135

Conviction Disclosure Required for Applicants for Licensure as Nursing Home Administrators

The board's application forms contain a conviction disclosure statement. If an applicant indicates a past conviction, the applicant is required to provide the arrest reports and court records, in addition to the standard California fingerprint card and DMV driving history required of all applicants. These documents are reviewed on a case-by-case basis by the board's Enforcement Program Coordinator, with final review by the executive officer.

CCR Section 3177 provides the substantial relationship criteria when considering a crime or act committed by an applicant or licensee for purposes of license denial, suspension or revocation. Subsection (a) provides the board authority to suspend or revoke the license of any licensee who has made false statements to the board during the initial licensure process.

CCR Section 3178 provides criteria for rehabilitation of applicants, persons applying for a license after denial, or a licensee whose license has been revoked. In considering grounds for license denial, besides B&P Code Sections 475 and 480, the board relies on B&P Section 3930 and CCR Section 3175.5.

CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

The board imposes continuing education (CE) requirements in an effort to ensure licensees are exposed to contemporary and refresher training courses in issues affecting state and federal regulations, patient care and industry trends.

As a condition of license renewal, licensees must demonstrate that they have completed 40 hours of CE credits within a two-year renewal period, with 25 percent of the requirement being in the area of "aging and patient care." CCR 16 Section 3140(d)(2), specifies CE credit requirements for nursing home administrators initially licensed for less than two years. The board has no jurisdiction over costs incurred by licensees to meet the regulatory requirements.

The board contends that CE is a necessary tool requiring nursing home administrators to utilize the most up-to-date information and practices known to the industry in the provision of care and management of *all long-term care recipients* [emphasis added].

However, it should be noted that licensed nursing home administrators (who would be the only administrators subject to these requirements) do not serve in all long-term care facilities or settings.

Licensees are not required to submit proof of completion of CE credits at the time of license renewal. However, they are required to execute an affidavit statement contained on the board's

renewal form attesting to the completion of the required number of CE credits for the specific renewal period. Licensees are required to submit copies of certificates of completion only if selected for a random CE audit.

CE Audits

Approximately every six months, the board conducts random CE audits from 10 percent of its renewing licensee population, or approximately 150 individuals per year. Failure to respond to a board audit constitutes grounds for disciplinary action.

The board has discovered CE verification problems most commonly involve missing certificates of completion, claiming a course for the wrong renewal period or inadequate record keeping by licensees. Very rarely is a course rejected due to an unacceptable provider or because of course content.

The board states that it “has no evidence that completion of CE requirements improves competency of nursing home administrators.” Nonetheless, the board asserts that ever-changing regulatory requirements at the federal level requires constant attention from the members of the profession, and the CE program provides incentive for licensees to remain proactive in the constantly changing climate of long-term care.

Moreover, the board also utilizes additional education as a term and condition of probation. This requirement is intended as a method of improving or correcting skill deficiencies identified in past performance. The board requires the licensee to complete the CE hours in addition to those required for license renewal.

ENFORCEMENT ACTIVITY

Complaint Process

The board accepts complaints from the general public, regulatory agencies and/or licensees via telephone or in writing. *As the majority of the complaints received fall within the jurisdiction of the Department of Health Services (DHS) or the Department of Aging’s Long-Term Care Ombudsman, and are so few in number, automation is unnecessary.*

COMPLAINT INFORMATION⁽¹⁾

	1992/93	1993/94	1994/95	1995/96
COMPLAINTS FILED	2	1699 ⁽⁴⁾	312 ⁽⁵⁾	9
COMPLAINTS DISMISSED	3	1698	308	8 ⁽⁶⁾
COMPLAINTS HANDLED INFORMALLY ⁽²⁾	0	0	0	6
COMPLAINTS HANDLED FORMALLY ⁽³⁾	0	1	4	2

⁽¹⁾ Prior to fiscal year 1994/95, the board did not categorize complaints received by type.

- (2) Informal handling is defined as “*without an investigation.*”
- (3) Formal handling is defined as “*referred to Division of Investigation.*”
- (4) Twelve complaints were against administrators; the remainder were facility citations from the DHS.
- (5) Fifteen complaints were against administrators; the remainder were facility citations from the DHS.
- (6) The complaints dismissed include those handled formally and informally; one complaint remains pending.

The following table includes the number of investigations commenced and completed during the last four years. Currently, the board has no pending or ongoing investigations at the Department of Consumer Affairs Division of Investigation (DOI):

INVESTIGATIONS

	1992/93	1993/94	1994/95	1995/96
INVESTIGATIONS COMMENCED	1	5	4	0
INVESTIGATIONS COMPLETED	2	5	5	2
OPEN/PENDING INVESTIGATIONS	3	3	2	0

INVESTIGATION COMPLETION INFORMATION ⁽¹⁾

The table on the following page illustrates a history of complaint investigation time frames from transmittal to completion for the past three years:

TIME PASSING FROM CASE REFERRAL TO COMPLETION	1992/93	1993/94	1994/95	1995/96
0-91 DAYS	unknown	2	1	0
91-180 DAYS	unknown	0	3	1
181-365 DAYS	unknown	0	0	1
1-2 YEARS	unknown	0	0	0
2-3 YEARS	unknown	0	0	0
3-4 YEARS	unknown	0	0	0
4+ YEARS	unknown	0	0	0

(1) Board and Division of Investigation records are unavailable for FY 1992/93. Case aging records are incomplete for three cases closed in FY 1993/94 and for one case closed 1994/95.

Disciplinary Action

The board may deny, suspend or revoke a license based on violation of board law. In addition to those sections within the general provisions of the B&P Code Section 3930, CCR Section 3175.5 sets forth specific grounds for disciplinary action as:

- Failure to comply with the board's specific regulations or the laws, rules and regulations relating to health facilities.
- The commission of any dishonest, corrupt or fraudulent act or act of physical or mental, including sexual, abuse in connection with the administration of, or any patient in, a nursing home.

- Violation of any federal or state statute or regulation regarding narcotics, dangerous drugs or controlled substances.

Although no formal diversion program for alcohol and substance abuse exists, the board may require licensees to attend substance abuse rehabilitation programs as condition of probation.

Gross negligence and incompetence are not defined in board law, but included as grounds for disciplinary action based upon the general provisions in B&P Code Section 3930. The board determines gross negligence or incompetence based upon a practitioner's performance. The board's statute does not define or include unprofessional conduct as grounds for disciplinary action.

Following are examples of violations which have actually been referred to the board for disciplinary action:

- Issuance of numerous citations relating to patient care at a facility or facilities where an administrator is employed.
- Conviction of grand theft (misappropriation of employer's money for personal benefit).
- Conviction of a crime involving fiscal dishonesty (falsifying income tax information).
- Conviction of numerous weapon and drug-related crimes.
- Facility decertified (federal government determination that facility does not meet standards to receive Medicare monies).
- Falsification of AIT application to qualify for licensure examinations.

The board does not have a procedure for the automatic suspension of a license. B&P Code Section 3932 specifies that proceedings to suspend or revoke a license must be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

CASE DISPOSITION HISTORY

The table below depicts the final dispositions for all board cases closed within the last four years:

FINAL DISPOSITION	1992/93	1993/94	1994/95	1995/96
LICENSE PROBATION	0	0	0	0
SUSPENSION STAYED; PROBATION ONLY	0	0	2	0
REVOCATION STAYED; PROBATION ONLY	0	0	2	0
REVOCATION STAYED; SUSPENSION & PROBATION	0	0	0	0
DEFAULT	0	0	2	0
REVOCATION	1	2	1	0
VOLUNTARY SURRENDER	1	0	0	1
ALLOWED LICENSE TO LAPSE; WILL NOT RENEW	0	0	1	0

DISCIPLINARY CASE COST INFORMATION

The table below depicts BNHA disciplinary cost data for the last four years.

	1992/93	1993/94	1994/95	1995/96
PARALEGAL HOURLY WAGE	46.90	46.90	50.00	52.00
ATTORNEY GENERAL HOURLY WAGE	90.00	90.00	95.00	98.00
TOTAL ENFORCEMENT BUDGET	\$ 86,213	\$ 86,313	\$ 85,445	\$ 102,439
TOTAL ENFORCEMENT EXPENDITURE	69,333	⁽⁶⁾ 120,496	82,146	44,902
ANNUAL AGO BUDGET	73,511	73,511	74,891	81,654
ANNUAL AGO EXPENDITURE	65,025	⁽⁶⁾ 117,434	80,050	33,164
ANNUAL OAH BUDGET	10,259	10,259	10,464	10,464
ANNUAL OAH EXPENDITURE	2,107	868	2,097	1,317
ANNUAL DOI BUDGET	2,200	2,167	0	10,321
ANNUAL DOI EXPENDITURE	2,200	2,167	0	10,321
COST RECOVERY REQUESTED ⁽³⁾	⁽³⁾	⁽³⁾	⁽³⁾	⁽³⁾
COST RECOVERY STIPULATED IN SETTLEMENT AGREEMENT ⁽⁴⁾	0	0	\$ 5,200	⁽⁵⁾ \$ 4,500
COST RECOVERY RECEIVED ⁽⁴⁾	0	0	600	4,350
COSTS INCURRED/RECOVERED AMT (%)	--	--	.0073%	9.68%

- (1) The board does not utilize an automated enforcement tracking system; therefore, violation information specific to each case is not readily available.
- (2) Average case cost includes total cost from referral to resolution/dismissal, and is counted in the year resolved, then divided by the number of cases closed.
- (3) The board requests reimbursement of reasonable investigation and enforcement costs in all Accusations filed without indicating a specific amount.
- (4) In July 1994, the board voted to include requests for cost recovery; thus, there is no data to report for FY 1992/93 and 1993/94. Settlement agreement negotiation includes costs the respondent is willing to pay and the minimum

- recovery amount the board will accept. However, recovery costs may be stipulated in one fiscal year, and payment(s) not commenced *or* paid in total within the same fiscal year.
- (5) Of the \$4,500 in costs stipulated in FY 1995/96, the board is aware one individual has refused to fulfill payment obligation of \$2,500. Therefore, the board will be pursuing civil action in early-mid 1997 in an effort to recover this amount.
 - (6) Finance approved the board receiving a \$76,387 deficiency to allow payment for casework performed by the AGO.

B&P Code Section 125.3 provides authority for the board to recover from licensees the reasonable costs of investigation and enforcement. In July, 1994, the board began to utilize this cost recovery authority and requested the AGO to include costs in all accusations. The table above sets forth all cost recovery payments collected by the board to date, and indicates the percentage of enforcement costs recouped through this process.

Although the above table reflects minimal costs recovered to date, it is important to keep in mind the majority of the cases settled since 1993 have been some of the board's most aged and costly cases. However, more current cases settled by the board reflect a dramatic increase in recovered enforcement costs. Two of the more recent settled cases contain cost recovery amounts more in line with what the board spent in order to dispose of the cases.

For example, Respondent "A" agreed to recovery cost reimbursement of \$5,000; \$2,500 payable in FY 1996/97, and \$2,500 payable in FY 1997/98, and Respondent "B" agreed to recovery costs reimbursement of \$2,200, payable in FY 1996/97. The total enforcement costs incurred in pursuing these cases was approximately \$12,000 and \$3,500, respectively. The cost recovery from Respondent "A" represents an approximate 42% cost to recovery ratio, while cost recovery from Respondent "B" represents an approximate 63% recovery of board costs.

The board's ultimate goal is to recover the highest percentage of enforcement costs incurred on a case-by-case basis; thus, assuring the "bad apples" offset the board's enforcement costs by paying, at least in part, for their own prosecution.

COMPLAINT DISCLOSURE POLICY

The board follows the guidelines of the California Public Records Act for accessibility of records. Disciplinary information is disclosed to the public only after formal service of an accusation. The board may provide copies of the accusation to the public if so requested. All other information contained in licensee files is available if requested by subpoena.

The board is required by law to issue notices of disciplinary actions, which is updated and distributed every six months to all facilities requiring licensed nursing home administrators, as well as consumers and family members upon request.

CONSUMER OUTREACH AND EDUCATION

The board has no formal outreach or education program on public awareness. However, because the general public is most often unaware that two separate licensing entities oversee nursing home facilities and the administrators operating those facilities, the board has a two-fold responsibility: to make the consumer aware of how and where complaints should be filed. The board's brochure, "Got a Problem Involving a Nursing Home?," provides information necessary regarding the complaint process, as well as DHS and Long-Term Care Ombudsman information. This brochure is provided at no cost either upon request or when it is determined a consumer may benefit from information contained therein.

2.

IDENTIFIED ISSUES AND FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

ISSUE #1. Should the licensing of nursing home administrators be continued?

Recommendation:

The State of California should continue to regulate nursing home administrators. However, the state may wish to consider seeking waiver or modification (e.g., to authorize certification or registration rather than licensure) of the federal mandate, or assessing the feasibility of initiating repeal legislation.

Comment: Licensing of nursing home administrators is mandated by federal law, and California must meet that mandate. It should be noted that nursing home administrators are the only licensed managers in the health care industry. However, there is considerable debate in the industry regarding whether licensure of nursing home administrators enhances patient/consumer protection in this highly regulated arena. There is considerable opinion in the industry that licensure of nursing home administrators is unnecessary, duplicative and ineffectual. They argue that nursing homes are now the most regulated and supervised health care delivery system in this State, with over ten federal and twenty state agencies (most notably the Department of Health Services), plus a myriad of local government agencies, that have a hand in regulating nursing homes.

ISSUE #2. Should the Board of Nursing Home Administrators be continued as an independent board, or are there other alternatives to the current regulatory program?

Recommendation:

The Board of Nursing Home Administrators should not

be continued as the regulatory agency of nursing home administrators. The existing statutory program of the Board, including licensing, enforcement, regulatory authority, and administrative review of all enforcement and licensing actions of the Nursing Home Administrator's License Law, should be transferred to another agency.

Comment: There is general agreement by all interested parties, including the board, that it is having difficulties carrying out its legal mandates. However, there is disagreement as to what is the cause of the problem. It appears as if the Board is experiencing a declining licensing population, an associated revenue loss and combined rising costs which are crippling the board.

The Board of Nursing Home Administrators recommended the continuation of regulation by the Board, while noting the economic and enforcement hardships it has endured. The industry has recommended that the Board be eliminated.

States are afforded considerable flexibility with respect to licensure of nursing home administrators. Federal law does not require the existence of a "board" structure in order to meet the federal licensing requirement. Either a state health care agency or a dedicated board may be designated to carry out the federal mandate.

The Department of Health Services (DHS) presently provides for the licensing, inspection and enforcement of nursing home facilities. In addition, DHS has experience with the licensure of individual practitioners through its existing program to license clinical laboratory technicians and perfusionists.